

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

August 28, 2009

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Oahu

Issuance of Revocable Permit to Waikiki Roughwater Swim, Inc. for 40th Annual
Waikiki Roughwater Swim at Duke Kahanamoku Beach, Waikiki, Honolulu, Oahu,
Tax Map Key:(1) 2-3-037:021 portion.

APPLICANT:

Waikiki Roughwater Swim, Inc., a domestic nonprofit corporation, whose mailing address is
P.O. Box 2847, Wailuku, Hawaii 96793.

LEGAL REFERENCE:

Sections 171-55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kalia, situated at Waikiki, Oahu, identified by Tax Map
Key:(1) 2-3-037:021 portion, as shown on the attached map labeled Exhibit A.

AREA:

1,500 square feet, more or less.

ZONING:

State Land Use District: Urban
City and County of Honolulu LUO: Public Precinct

TRUST LAND STATUS:

Section 5(a) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Requested area is vacant and unencumbered.

CHARACTER OF USE:

40th annual Waikiki Roughwater Swim

TERM:

September 7, 2009

RENTAL:

Rental will be based on 10¢ per square feet per day.

COLLATERAL SECURITY DEPOSIT:

None.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No.1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u> </u>

REMARKS:

The applicant coordinates the swim event at Waikiki every year. Pursuant to the authority delegated by the Board on September 28, 2001 (D-4), right-of-entry permits were issued for the event in the past.

Early last year, the Department started issuing wedding permits subject to the conditions attached as Exhibit B. After discussion about different type of commercial activities among the staffs, the Division believes that any application which does not comply with the

conditions at Exhibit C shall be submitted to the Board for disposition.

Recently, the applicant requests conducting the swim event on September 7, 2009 at Duke Kahanamoku Beach. Under the request, tents need to be placed on the beach for various purposes, for example, first aid station, water station, announcer station etc.

Exhibit B stipulates that no structure, subject to exception provided therein, shall be allowed within the permit area. A proposed layout of the event is attached as Exhibit C. The proposed tents prevent the applicant from obtaining a permit under the same set of condition in Exhibit B. Therefore, staff brings the request to the Board for consideration.

The proposed event lasts only until 12:00 noon and the clean up may take one to two hours. In view of the relative short duration, staff recommends the Board authorize using a letter to be signed by the Chairperson covering the terms and conditions for the event instead of a revocable permit document.

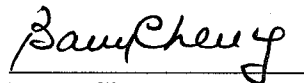
Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the past five years due to non-compliance with such terms and conditions.

No comments were solicited from other government or community agencies being that there would be no changes in the applicant's prior use of the area. There are no other pertinent issues or concerns. Staff has no objection to this request.

RECOMMENDATION: That the Board authorize the issuance of a revocable permit to Waikiki Roughwater Swim, Inc. covering the subject area for 40th Annual Waikiki Roughwater Swim purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

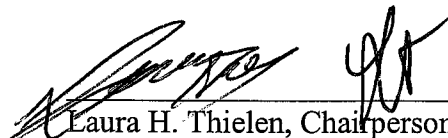
- a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
- b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,




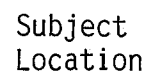
Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson





Unencumbered Land, State Public Beaches
General Terms and Conditions for Commercial Activity

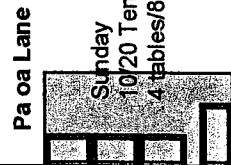
1. The set-up, event, and restoration of the right-of-entry area or premises shall be limited to the date(s) and time(s) provided by the Applicant in the application, which in no event shall exceed two hours.
2. The right-of-entry permit is subject to the payment of a non-refundable fee based on 10¢ per square foot per event per day, and further subject to a minimum fee of \$20.00 per event.
3. Applicant shall procure at Applicant's own expense, and maintain during the entire period of the right-of-entry permit, from an insurance company or companies licensed to do business in the State of Hawaii, a policy or policies of comprehensive public liability insurance in an amount of at least \$300,000 per incident and \$500,000 aggregate insuring the State of Hawaii against all claims for personal injury, death, and property damage; that said policy shall cover the entire right-of-entry area or premises, including all improvements and grounds and all roadways or sidewalks on or adjacent to the said right-of-entry area or premises in the control or use by Applicant. Applicant shall furnish the Department of Land and Natural Resources (the "Department") with a certificate(s) showing the policy(s) to be initially in force and naming the State of Hawaii as additional insured and keep said certificate(s) on deposit during the entire period. The procuring of this policy shall not release or relieve Applicant of its responsibility under this right-of-entry permit as set forth herein or limit the amount of its liability under this right-of-entry.
4. Applicant shall indemnify, defend, and hold the State of Hawaii, Department of Land and Natural Resources harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: (a) any act or omission on the part of Applicant relating to Applicant's use, occupancy, maintenance, or enjoyment of the right-of-entry area or premises; (b) any failure on the part of Applicant to maintain the right-of-entry area or premises and areas adjacent thereto in Applicant's use and control, and including any accident, fire or nuisance growing out of or caused by any failure on the part of Applicant to maintain the area or premises in a safe condition; and (c) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of Applicant's non-observance or non-performance of any of the terms, covenants, and conditions of this right-of-entry or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.
5. At all times herein, Applicant shall keep the right-of-entry area or premises in a strictly clean, sanitary and orderly condition.
6. Applicant shall be responsible for cleaning and restoring the right-of-entry area or premises to its original condition or a condition satisfactory to the Department upon completion of each day's event or activity. All trash shall be removed from the right-of-entry area or premises. If the Department finds that the Applicant has failed to clean and restore the right-of-entry area or premises to the Department's satisfaction, Applicant agrees to and shall reimburse the Department for all costs and expenses associated with cleaning and restoring the area or premises to its original condition.

7. Applicant shall comply with all of the requirements of all federal, state, and municipal, authorities and observe all federal, state, and municipal laws applicable to the right-of-entry area or premises now in force or which may be in force.
8. **NO ALCOHOLIC BEVERAGES SHALL BE SERVED OR PERMITTED IN THE RIGHT-OF-ENTRY AREA OR PREMISES.**
9. Applicant shall not permit commercial solicitation including the sale of any item or advertising of commercial products to be conducted in conjunction with the permitted activity (no banners, handouts, flyers, posters, etc.).
10. Applicant shall be responsible for providing any security deemed necessary or appropriate for the right-of-entry area or premises during the requested event or activity.
11. Applicant shall supply to Land Division a name and local telephone number of a contact person who will be available at all times during the scheduled event.
12. No person shall drive a motor vehicle on the right-of-entry area or premises.
13. Applicant in the exercise of the right-of-entry permit shall use appropriate precautions and measures to minimize inconveniences to surrounding residents, landowners, and the public in general. Applicant shall not engage in any activity that may obstruct, impede, or interfere with the public use of the surrounding area or any public access to the area.
14. No accessories, structures, devices, amplified instruments, appliances, apparatus or equipment of any type whatsoever shall be placed on or within the right-of-entry area or premises, including but not limited to the following:
 - arches;
 - bowers;
 - alters;
 - tables;
 - chairs;
 - kahilis;
 - tents and or tarps;
 - event signage of any type including banners, sandwich boards;
 - kiosks or carts;
 - stanchions, posts, ropes or similar equipment for the purpose of demarcation of the right-of-entry area; and
 - surfboards, windsurf boards, kayaks or other ocean recreation equipment;with the exception of the following:
 - loose flowers, leis, bouquets, corsages or boutonnieres;
 - unamplified musical instruments, including a conch shell;
 - doves or butterflies for releases;
 - a limited number of chairs as strictly necessary for the support of elderly, infirm, or disabled persons attending the event(s);
 - cameras and camera equipment;
 - other non-obtrusive hand-carried wedding accessories;
 - small podium or cake stand, not to exceed three feet square in size; and
 - ocean vessels/equipment used exclusively for the purpose of scattering ashes during authorized funeral services.

15. In the event any historic properties or burial sites, as defined in section 6E-2, Hawaii Revised Statutes, are found on the right-of-entry area or premises, Applicant shall immediately stop all premises utilization or work or both and contact the State Historic Preservation Division in Kapolei at (808) 692-8015 in compliance with Chapter 6E, Hawaii Revised Statutes.
16. Best management practices shall be employed to avoid having silt or dirt enter the ocean.
17. All disputes or questions arising under this right-of-entry shall be referred to the Chairperson of the Board of Land and Natural Resources for a determination and resolution of the dispute or question. The Chairperson's decision shall be final and binding on the parties herein.
18. The right-of-entry permit is revocable and terminable at anytime for any reason in the sole and absolute discretion of the Chairperson. As long as the revocation or termination is not as a result of any fault of, or default by Applicant of any provision of this right-of-entry permit, then Applicant may apply for a refund of any advanced rental payment made based upon the percentage of use denied by the revocation or termination.
19. The right-of-entry permit is subject to Hawaii Administrative Rules, Title 13, Sub-title 10, Chapter 221, Unencumbered Public Lands, as amended. Rules are available for review at <http://hawaii.gov/dlnr/land/administrative-rules>. Applicant is required to familiarize himself with these rules. Applicant acknowledges that he has read, understands, and agrees to abide by these rules.
20. The right-of-entry permit or any rights hereunder shall not be sold, assigned, conveyed, leased, let, mortgaged or otherwise transferred or disposed.
21. The Department of Land and Natural Resources reserves the right to impose additional, terms and conditions as it deems necessary or appropriate while the right-of-entry is in force.
22. All representatives of any commercial operator or service provider at the site must carry a copy of this permit with them and make it available for inspection at all times during the event(s). Failure of any operator or provider to carry this permit and make it available for inspection upon request by any DLNR official or enforcement officer shall constitute a violation under this permit.
23. The applicant as the responsible party shall ensure that all terms and conditions of the permit are adhered to and met. In most cases, the applicant will be a wedding coordinator or professional. All other professionals that may be associated with the event, such as a videographer, photographer, a minister, etc., shall be required to and by possessing a copy of this document do hereby agree to also abide by the terms and conditions of this permit and shall carry a copy of this permit on their person at all times during the event.
24. Violations of one or more permit conditions may result in administrative action, imposition of fine(s), and the rejection of future right-of-entry applications.
25. Applicant shall comply with other written conditions, which may be imposed by the Chairperson of the Board of Land and Natural Resources.

Waikiki Rough Water Swim

Finish Line/Beach Set-up

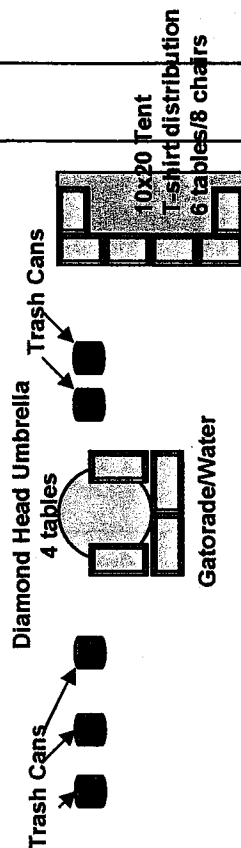


Hilton Hawaiian Village

Stage

Sidewalk

Beach Usage
 1 10x20 tents = 200 sq ft
 2 10x10 tents = 200 sq ft
 Finish Line area = 1100 sq ft
 Total Usage = 1500 sq ft



All remaining beach
 area completely open
 the public

